

OFFICE OF THE GOVERNOR
STATE OF MONTANA

GREG GIANFORTE
GOVERNOR



KRISTEN JURAS
LT. GOVERNOR

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John Mehlhoff
State Director, Montana/Dakotas
Bureau of Land Management
5001 Southgate Drive
Billings, MT 59101

Tom Darrington
Malta Field Office
Bureau of Land Management
501 South 2nd Street
Malta, MT 59538

Re: Draft Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for American Prairie Reserve's Bison Change of Use (DOI-BLM-L010-2018-007-EA)

Messrs. Mehlhoff and Darrington:

Thank you for the opportunity to offer comment on the U.S. Bureau of Land Management's (BLM) draft American Prairie Reserve (APR) Bison Change of Use EA (DOI-BLM-L0010-2018-0007-EA) and associated Finding of No Significant Impact (FONSI).

After reviewing the Draft EA and FONSI, the State of Montana has numerous concerns which prevent it from endorsing the BLM's preferred alternative. The Montana Department of Fish, Wildlife and Parks (FWP), Montana Department of Natural Resources and Conservation (DNRC), Montana Department of Agriculture (AGR), and Montana Department of Livestock (DOL) have all submitted comments addressing the proposal and highlighting issues specific to their agency. While the substance of those comments is incorporated herein by reference, I take this opportunity to reiterate the following.

1. The permit identified in the proposed alternative is beyond the BLM's authority to issue.

The BLM lacks the statutory authority to issue the proposed permit. Regardless of whether the BLM labels APR's herd "bison," "domestic indigenous animals," or "indigenous livestock,"

neither federal statute nor rule define bison as “livestock.” As such, they are ineligible for the permit contemplated by the BLM in the Draft EA and FONSI.

The allotments at issue were formed in accordance with the Taylor Grazing Act (TGA) of 1934. That law specifically established grazing districts and their use by livestock with an eye toward preventing resource deterioration, providing for the orderly use, improvement, and development of public grazing lands, and stabilizing the livestock industry dependent on the range. To this end, the Secretary of the Department of the Interior was authorized to issue permits to graze livestock. The TGA does not condone grazing permits for non-production, non-livestock species, especially if such an authorization were found to be in derogation of the livestock industry and local economy.

Nothing in the Federal Land Policy and Management Act of 1976, nor the Public Rangelands Improvement Act of 1978, changes the TGA’s land management objectives for the parcels at issue. In fact, both laws codify and affirm Congress’s intent that grazing permits be limited for the purpose of grazing domestic livestock.

Federal grazing rules mirror the intent of the TGA, FLPMA, and PRIA, identifying the sustainability of the livestock industry and associated communities as a primary goal. 43 CFR § 4100.0-2. The rules also limit grazing permits like those at issue here to livestock, which are defined as a “species of domestic livestock—cattle, sheep, horses, burros, and goats.” 43 CFR §§ 4130.2(a) and 4100.0-5.

“Indigenous animals” are referred to in the grazing rules in relation to *special* grazing permits or leases. 43 CFR § 4130.6-4. However, those permits are not what APR has requested, nor what the BLM proposes to grant, given that their issuance is subject to different analysis and that those permits may not be renewed, transferred, or assigned. 43 CFR § 4130.6-4 and § 4130.6.

The BLM’s Draft EA and FONSI mix and match terminology, impermissibly cross-pollinating regulatory concepts in a manner that offends decades of established statute and rule. For this reason, the proposed permit cannot issue.

2. The Draft EA and FONSI do not analyze the full range of potential impacts associated with the proposed alternative, especially economic impact.

Even if the proposed action was legally correct, the Draft EA and FONSI fail to fully analyze potential impacts associated with each alternative. FWP, DOL, DNRC, and AGR each articulate weaknesses within the Draft EA and FONSI that they find particularly concerning. The BLM’s insufficient economic analysis, however, is unanimously problematic.

The proposed alternative would remove production agriculture from the BLM lands in question and authorize use by a “non-production-oriented, wildlife management focused” bison herd. Draft EA at 3-42. This is a change from the status quo, which could create material economic impact.

Agriculture is Montana’s largest industry. It not only provides economic stability for our families, but serves as the cultural backbone of our state. Any action that could threaten the stability of our Montana’s livestock industry, its ability to market healthy products, or the strength of its socioeconomic fabric deserves to be fully vetted and analyzed in an honest, thorough manner.

The Draft EA analyzes APR's bison operation under a production agriculture model. Specifically, the Draft EA uses market "bison farm" inputs and outputs to simulate economic effects of each alternative. *See, id.* at Appx. D. This is problematic, given that APR's herd is not "farmed" and does not share traditional production agricultural inputs and outputs. The BLM notes the ill-suited nature of the analysis as it assumes a "production-oriented enterprise and is likely to overestimate the potential effects from non-production-oriented, wildlife management focused bison grazing..." *Id.* at 3-42.

The BLM's determination to use such an inappropriate model is a disservice to the National Environmental Policy Act (NEPA) process as well as to the fragile communities to whom agriculture is lifeblood. The BLM should revisit its Draft EA and conduct an analysis that assesses how any economic impact a "non-production-oriented, wildlife management focused" might have on local businesses and communities.

3. Montana requests that the BLM hold any permit until such time as the State has conducted and completed its Montana Environmental Policy Act (MEPA) analysis.

For decades, the allotments at issue in the Draft EA have been comprised of state, federal, and private lands. While this composition has created management challenges, each entity has historically found a way to communicate and co-manage cooperatively within the allotment. A number of creative planning and management tools have been used to this end, including allotment management plans (AMPs) and fencing patterns based on geography and land utilization rather than ownership.

Given the change sought by APR, that the BLM's analysis is limited to BLM lands, and the number of insufficiencies in the Draft EA and FONSI identified by DNRC, FWP, DOL, and AGR, Montana will independently conduct its own environmental review to the extent required, and in accordance with, MEPA. It is possible that Montana's MEPA analysis may prove relevant to BLM's own NEPA process. As such, and given the interrelated character of the parcel ownerships, I formally request that the BLM stay any decision to issue the requested permit until such time as Montana has conducted and completed its MEPA analysis. Alternatively, I ask that BLM commit to considering DNRC's findings in a supplemental EA upon DNRC's completion of MEPA.

4. The comment opportunity the BLM afforded to the public was woefully insufficient.

On July 1, 2021, immediately before the long holiday weekend, the BLM released the Draft EA and FONSI for public review and comment. The BLM also announced one public comment opportunity, a virtual meeting to be held from 1-4 pm on Wednesday, July 21.

During the public comment period, I wrote to BLM officials twice, asking that it hold in-person, public hearings at each affected location so that Montanans could meaningfully engage on this matter. The BLM declined, limiting public comment to one remote meeting, held in the middle of a summer afternoon when the vast majority of those affected were trying to wrest their livelihoods from a devastating drought.

One of the primary purposes of the NEPA is to ensure that proposed actions are appropriate given the backdrop of people and place. By limiting public participation to a single, virtual event at a

time when affected communities could not attend, the BLM failed to fulfill the spirit and intent of NEPA. Montanans thirst to have their voices heard. The desire to comment on this issue is so great that residents of Phillips County, with the assistance of the Montana attorney general, organized their own public comment opportunity. Residents from across Montana travelled to Malta so that they could speak and be heard.

Of equal concern is the apparent removal of two related decisions from the BLM National NEPA Register: 1) Change in Class of Livestock EA MT-090-04-026 for Telegraph Creek Allotment, and 2) Change in Livestock Use EA MT-090-08-019 for Middle Box Elder Allotment. These decisions are referenced in the present Draft EA, and the fact that they are inaccessible to the public only compounds the limitations on participation experienced to date.

The very fact that Montanans have been forced to organize their own hearing opportunities is evidence that the BLM's process, to date, has failed its mandate. I ask, yet again, that the BLM extend the comment period to hold in-person hearings in the affected communities. I also ask that the two referenced EA's be made available on the register to allow the public an opportunity to consider all relevant information.

I thank you again for your time and attention and look forward to working with you on this matter in the days, weeks, and months to come.

Sincerely,



Greg Gianforte
Governor